INDEX

TABLE OF AUTHORITIES

Cases

Other Authorities

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 135

ORGANIZATION FOR A BETTER AUSTIN, et al.,

Petitioners,

vs.

JEROME M. KEEFE,

Respondent.

On Writ of Certiorari to the Appellate Court of Illinois, First District.

BRIEF FOR RESPONDENT

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution
Fourth Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall

issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Illinois Constitution
Article II, § 19

Every person ought to find a certain remedy in the laws for all injuries and wrongs which he may receive in his person, property or reputation; he ought to obtain, by law, right and justice freely, and without being obliged to purchase it, completely and without denial, promptly, and without delay.

Illinois Revised Statutes 1969
Ch. 38, § 21.1

Article 21.1 Residential Picketing

Sec.
21.1-1 Legislative finding and declaration.
21.1-2 Prohibition—exceptions.
21.1-3 Penalty.

Article 21.1 was added by act approved June 29, 1967. L. 1967, p. 940.

21.1-1. § 21.1-1. *Legislative finding and declaration.* The Legislature finds and declares that men in a free society have the right to quiet enjoyment of their homes; that the stability of community and family life cannot be maintained unless the right to privacy and a sense of security and peace in the home are respected and encouraged; that residential picketing, however just the cause inspiring it, disrupts home, family and communal life; that residential picketing is inappropriate in our society, where the jealously guarded rights of free speech

and assembly have always been associated with respect for the rights of others. For these reasons the Legislature finds and declares this Article to be necessary. Added by act approved June 29, 1967. L. 1967, p. 940.

21.1-2 *Prohibition—Exceptions.*] § 21.1-2. It is unlawful to picket before or about the residence or dwelling of any person, except when the residence or dwelling is used as a place of business. However, this Article does not apply to a person peacefully picketing his own residence or dwelling and does not prohibit the peaceful picketing of a place of employment involved in a labor dispute or the place of holding a meeting or assembly on premises commonly used to discuss subjects of general public interest. Added by act approved June 29, 1967. L. 1967, p. 940.

21.1-3. *Penalty.*] § 21.1-3. Any person who violates Section 21.1-2 shall be fined not more than $500 or imprisoned not more than 6 months, or both. Added by act approved June 29, 1967. L. 1967, p. 940.

QUESTIONS PRESENTED

1. Whether the interest of the State of Illinois in promoting the peace and stability of home, family and community permits regulation of conduct intended to force agreement by intrusion into residential privacy.

2. Does the First Amendment give a hostile community organization the unqualified right to continued physical presence in a residential neighborhood for the sole purpose of compelling an agreement over business practices in a distant community by distribution of handbills threatening continued residential intrusion until the agreement is secured?

3. Whether the State of Illinois may reasonably limit conduct intended to coerce abandonment of lawful business practices.

Statement of The Case

Respondent Jerome M. Keefe ("Keefe") is a licensed Illinois real estate broker engaged in the real estate business on the west side of Chicago in the so-called Austin community. (A. 17) He resides with his family in the suburb of Westchester approximately 7 miles from his place of business. The Austin community in 1967 was in the process of racial transition. Petitioner Organization for a Better Austin ("OBA") is a neighborhood organization which, among its other activities, was trying to slow the exodus of white families from Austin. (A. 33-34)

Keefe, one of approximately 100 real estate brokers in Austin, solicited for business on occasion by having young boys distribute his business card from door to door. (A. 24) The card simply stated: "We invite your listings. We have prospective buyers for income property and residential property in the Austin area." and identified his business name, place of business and business telephone. (A. 37, 10)

The OBA objected to any form of solicitation of real estate listings and had induced three of the one hundred brokers in Austin to sign agreements saying that they would not solicit. (A. 41) Prior to 1969, solicitation by a real estate broker in Illinois was not illegal, unless done on the basis of prospective loss of value due to racial change.*

---

* Chicago Fair Housing Ordinance, ch. 198.7-B, Municipal Code of Chicago; Ill. Rev. Stat. 1969, ch. 38, § 70-51. In 1969, Illinois adopted legislation permitting the owners of residential property to prohibit all broker solicitation by registration with the Illinois Human Relations Commission and notice to brokers. Ill. Rev. Stat. 1969, ch. 127, § 214.4-1; Ill. Rev. Stat. 1969, ch. 38, § 70-51(d).

Keefe offered to sign an agreement that he would not solicit on the grounds of loss of value due to racial change, that he would abide by the fair housing law, that he would show all listings to both white and Negro buyers and that he would make all his listings available to the OBA. (A. 61-62) The OBA refused to accept this agreement unless Keefe signed the additional pledge: "Neither I, Jerome Keefe, nor any of my salesmen, will solicit property, by phone, flyer, or visit, in the community of Austin." (A. 61) If Keefe signed this agreement four of the 100 real estate brokers in Austin could not solicit listings.

Defendants' Tactics

In order to coerce Keefe into capitulating to their demands, the OBA initiated a program of picketing, leaflet distribution and other tactics calculated to apply pressure on Keefe, both at his home and place of business. The purpose of these activities was admittedly to make Keefe sign the non-solicitation agreement. (A. 65) Leaflets highly critical of Keefe were prepared and taken by OBA members to his residence where Mrs. Keefe was informed that they would be distributed to her neighbors unless Keefe agreed to meet with them. (A. 50) A meeting took place at which Keefe was asked to sign the nonsolicitation agreement. (A. 51) Upon his refusal, a number of OBA members proceeded to Westchester and began distributing the leaflets door to door to Keefe's neighbors. (A. 53) Leaflets were also distributed at his shopping center and to his fellow parishioners at church. (A. 6, 54-55) While the leaflets varied, the theme was the same. (A. 11):

RESIDENTS OF WESTCHESTER BEWARE—

Jerome Keefe
1951 Manchester
Westchester, Illinois
FI 5-3784
Is the real estate broker who
operates out of Jerry's Real
Estate 214 S. Laramie,
Chicago 378-8993.
He has been accused of PANIC PEDDLING.

THE REASON WE ARE IN WESTCHESTER TODAY IS THAT—

He has refused to sign an agreement
with us stating that he will not
solicit in our community.
While on a solicitation call in our
community he stated: "I only sell
to Negroes."
When asked if he had ever done busi-
ness in anything but a racially
changing neighborhood he said "NO"

WE THE NEGRO AND WHITE RESIDENTS OF AUSTIN DEMAND THAT THIS TYPE OF ACTIVITY STOP.

If you want us to stop coming to
Westchester call Jerry Keefe at
FI 5-3784 or 378-8993
and tell him to sign the agreement
with the Austin community.

WHEN HE SIGNS WE STAY IN AUSTIN.

A telegram highly critical of Keefe was sent by the OBA and was published by Keefe's local community newspaper, the Westchester News. (A. 26) These activities continued for over a month. (A. 6) Approximately 30 pickets also began patrolling Keefe's place of business. (A. 43)

While the dispute with the OBA was occurring, Keefe's place of business was burned down. (A. 44) The OBA denied any connection with this occurrence.

Nature of The Proceedings Below

Keefe filed suit to enjoin the OBA from picketing his place of business and his home and from distributing derogatory pamphlets there. (A. 4) There has never been a hearing on the merits of this case. This matter came on for hearing on the request of Keefe for a temporary restraining order of ten days' duration. (A. 16, 68) The purpose of a temporary injunction is to preserve the status quo in the last actual peaceable uncontested status which preceded the suit. It is provisional in nature and does not conclude any rights. *Consumers Digest, Inc.* v. *Consumer Magazine,* 92 Ill. App. 2d 54, 235 N.E. 2d 421, 425 (First District, 1968). The parties recognized that there was additional evidence which would be submitted upon a final hearing on the merits which would refine the factual issues. (A. 66) That evidence is not part of this record.

The Decree Below

The trial court stated that it had no power to enjoin peaceful picketing at Keefe's place of business and that if any libelous placards or pamphlets were distributed there, Keefe's remedy was an action at law for defamation. (A. 67) However, the court did hold that the OBA's activities in Westchester violated Keefe's right of privacy and granted a preliminary injunction.

The order temporarily restrained the OBA from passing out pamphlets, leaflets or literature of any kind, and from picketing, anywhere in the City of Westchester, Illinois. (A. 70) The order expressly denied Keefe's request for an injunction against picketing Keefe's place of

business and passing out pamphlets critical of his method of doing business. (A. 70)

Illinois permits appeals of interlocutory injunction orders to the Appellate Court. Ill Rev. Stat. 1969, ch. 110A, § 307. Keefe did not cross-appeal the denial of a temporary restraining order enjoining OBA activities around his place of business.

The Appellate Court here affirmed the decree of the trial court in an opinion reported in 115 Ill. App. 2d 236, 253 N.E. 2d 276 (1969).

Summary of Argument

I.

Protection of the home and its environs is the essence of the "right of privacy." Where there is conflict between individual privacy, and the right of others to communicate, it is proper to balance the conflicting interests. *Rowan* v. *United States Post Office*, 397 U.S. 728 (1970).

The public policy of the State of Illinois strongly favors the protection of privacy and peace in the home. Residential picketing has been made illegal. Ill. Rev. Stat. 1969, ch. 38, § 21.1-2.

The activities of the OBA in Westchester were admittedly for the sole purpose of coercing Keefe into signing the non-solicitation agreement. The essence of these activities was the presence of members of the OBA on Keefe's block, at his church, and in his shopping center distributing handbills with the threat of returning to the community until Keefe signed the agreement. The State's interest in preserving the peace and privacy of home, family and communal life is sufficient to bar such tactics designed solely to compel agreement by intrusion on residential privacy.

II.

Handbilling, unlike newspapers and periodicals, is not beyond the control of the state if conducted in a manner and for a purpose similar to picketing. *Hughes* v. *Superior Court*, 339 U.S. 460 (1950). The conduct of the OBA in Westchester was calculated to alarm and discomfort Keefe's neighbors by the recurring physical presence of OBA members in the community. The order below does not prevent the OBA from communicating adversely about Keefe in Westchester or anywhere else; it does prohibit their physical presence in the community of Westchester.

(A)

The purpose of the OBA activities in Westchester was properly examined by the trial court in determining whether to issue an injunction. *Hughes* v. *Superior Court*, 339 U.S. 460 (1950); *Giboney* v. *Empire Storage Co.*, 336 U.S. 490 (1949). Where the OBA's purpose was admittedly to coerce rather than communicate, the court properly held that such purpose did not outweigh Keefe's right of privacy.

(B)

The Jehovah Witness cases where this Court struck down municipal ordinances prohibiting or unreasonably restricting the distribution of handbills are not applicable to this case. In none of the cited cases was handbilling a weapon to coerce particular conduct from a protagonist. The right of the OBA to communicate generally regarding Keefe is not in issue.

III.

The right to engage in a lawful business is fully protected in Illinois. *Klein* v. *Department of Registration*, 105 N.E. 2d 758 (1952). The Illinois Courts have traditionally enjoined unreasonable interference with another's right to engage in his lawful occupation. *Carpenter's Union* v. *Citizens Committee to Enforce the Landis Award*, 164 N.E. 393 (1928); *Austin Congress Corp.* v. *Mannina*, 196 N.E. 2d 33 (1964); *Truax* v. *Corrigan*, 257 U.S. 312 (1921).

IV.

The OBA did not specifically object to the restraint against picketing in Westchester. Under Illinois practice, it was too late to complain of the scope of the temporary injunction on appeal. *Austin Congress Corp.* v. *Mannina*, 196 N.E. 2d 33, 34 (1964).

ARGUMENT

I.

The Trial Court Struck A Proper Balance Between Illinois' Interest In Preserving The Peace And Privacy Of Home And Community And The OBA's Right To Communicate.

The trial court specifically found that the activities of the OBA in Westchester violated Keefe's "right of privacy." (A. 74) The "right of privacy" is a generic term which covers a variety of conduct. Prosser, *Law of Torts*, § 112 (3rd Ed., 1964). It is embodied in the Fourth Amendment, *Mapp* v. *Ohio*, 367 U.S. 643, 656 and has other constitutional penumbras, *Griswold* v. *Connecticut*, 381 U.S. 479, 484 (1964).

The essence of privacy is "the right to be let alone." Cooley, *Torts*, 2d ed., 1888, 29. This court has recognized both the existence of the right of privacy, *Griswold* v. *Connecticut*, 381 U.S. 479, 484-486 (1965), and the necessity of balancing this right when it conflicts with first amendment rights of others, *Rowan* v. *United States Post Office*, 397 U.S. 728 (1970). In the *Rowan* case, certain mail order houses and mailing list brokers challenged the constitutionality of an Act of Congress which permits a householder to have his name removed from mailing lists used to sell matters which the addressee in his sole discretion believes to be erotically arousing or sexually provocative, arguing that the statute violated their constitutional right to communicate. In sustaining the constitutionality of the statute, Mr. Chief Justice Burger stated (p. 736):

> "Without doubt the public postal system is an indispensable adjunct of every civilized society and com-

> munication is imperative to a healthy social order. But the right of every person 'to be let alone' must be placed in the scales with the right of others to communicate."

The home has been recognized as the "essence of privacy," *Bell* v. *Maryland*, 378 U.S. 226, 253 (1964). Indeed, learned commentators have urged that, "Freedom of the home is as important as freedom of speech." *Breard* v. *Alexandria*, 341 U.S. 622, 639, n. 27 (1950). Grave concern has been expressed over the practice of demonstrations around homes, " . . . the sacred retreat to which families repair for their privacy . . . " *Gregory* v. *City of Chicago*, 394 U.S. Ill. 111, 125 (1969).

Residential picketing has been denounced as an intrusion on privacy. Kamin, *Residential Picketing and the First Amendment*, 61 Nw. L. R. 177, 225-31 (1966).

Indeed in 1967 Illinois made it unlawful to picket before or about the residence or dwelling of any person. (Ill. Rev. Stats. 1969, ch. 38, § 21.1-2). The public policy of the State of Illinois was expressed by the Legislature as follows (§ 21.1-1):

> "The Legislature finds and declares that men in a free society have the right to quiet enjoyment of their homes; that the stability of community and family life cannot be maintained unless the right to privacy and a sense of security and peace in the home are respected and encouraged; that residential picketing, however just the cause inspiring it, disrupts home, family and communal life; that residential picketing is inappropriate in our society, where the jealously guarded rights of free speech and assembly have always been associated with respect for the rights of others. For these reasons the Legislature finds and declares this Article to be necessary."

Residential picketing does not have the picket line's traditional significance. It is not done to discourage entry into the premises being picketed. There are no customers

or employees to warn. Rather, it is an attempt to embarrass and harass the householder where he is most vulnerable, among his family and neighbors. The recurring presence of members of a hostile neighborhood organization distributing handbills urging residents to pressure their neighbor is no less offensive to a householder than patrol of his sidewalk by a picket. The State of Illinois, acting through its judicial branch, has extended the protection of home, family and communal life to such intrusive and disruptive conduct.

The OBA had no concern whether Westchester residents knew of Keefe's affairs. If he signed the non-solicitation agreement, no one from the OBA would go to Westchester. (A. 53, 11, 12) The activities of the OBA in Westchester were a calculated attempt to deliberately invade Keefe's privacy until he bent to their will. The "medium was the message."

If the OBA has the unrestricted right to distribute derogatory leaflets in the area of Keefe's home until he agrees to meet their demands, do disappointed litigants also have the right to air their grievances with the judge's neighbors, may the focal zone of college disputes be the administrator's residence rather than the campus and must public servants involuntarily share their burdens and controversies with family and neighbors?

In *Public Utilities Commission* v. *Pollak,* 343 U.S. 451 (1952), Mr. Justice Douglas, in his dissenting opinion stated (p. 467):

> "Liberty in the constitutional sense must mean more than freedom from unlawful governmental restraint; it must include privacy as well, if it is to be a repository of freedom. The right to be let alone is indeed the beginning of all freedom."

The vice of protest directed against the home has frequently been recognized. In *Pipe Machinery Co.* v. *DeMore*, 76 N.E. 2d 725 (Ohio App. 1947), app. dis., 149 Ohio St. 582, 79 N.E. 2d 910 (1948), striking employees went to the residences of eight working employees of plaintiff carrying placards naming each employee, describing him as a "scab" and bearing legends such as, "How can you stand to live so near him?" and "Know your neighbor." Plaintiff obtained an injunction against picketing in the vicinity of the employees' residences and the defendants claimed that such injunction violated their right to free speech. The court noted that the purpose of the picketing and of the placards was not to give the public information as to the merits of the strike but was to intimidate or persuade them to join the strikers. The court held that an injunction restraining the defendants from picketing and circulating placards at or near the employees' residences did not infringe the rights of free speech stating (76 N.E. 2d at 727):

> "The allowable area of economic conflict should not be extended to an invasion of the privacy of the home. Here dwell husband and wife, parents and children, who should enjoy immunity from the external strife of industrial dispute. . . . The common law has always treated the home of a person with great respect. The home is referred to as a man's 'castle' or his 'sanctuary.' Picketing homes and the use of language referring to the head of the house as a 'scab' would not aid in establishing the proper environment for a home. . . . We are not dealing here with a limitation upon the right of free speech. It is obvious that picketing in this case was not for the purpose of disseminating any information as to the strike. Picketing interfered with the quiet and peaceful environment of the homes and thereby established conditions making more difficult the raising of a family and the maintenance of a home."

In *Hebrew Home and Hospital for the Chronic Sick, Inc. v. Davis*, 235 N.Y.S. 2d 318 (Sup. Ct., 1962), a respected jurist was chairman of the board of directors of a hospital which was involved in a labor dispute. Pickets appeared in front of the judge's residence carrying placards saying, "Judge ..... thou shalt not steal the election of 54 workers." A temporary injunction was issued, the court stating (p. 324):

> "There is not a scintilla of justification shown for this conduct. Truly it is shocking, reprehensible and outrageous, deserving the unhesitating and scathing rebuke of the court. Conducted at a considerable distance from the hospital, in an exclusively residential area, it was apparently aimed to cause unspeakable embarrassment, humiliation and mortification to the named jurist and his family. It represents a form of direct and unmitigated coercion and terrorism that should be roundly denounced and sternly condemned. Not within any conceivable limit of the right to free speech and the right to inform, it represents a mean, foul and sinister blow, one to which decent unionism would not stoop."

Protest carried to the doorstep is effective. Few can withstand the distress to wife and child, the intrusion upon friends and neighbors caused by the unremitting distribution of derogatory handbills urging that neighbor take action against neighbor. The concept of privacy is meaningless if it cannot protect the home from such unreasonably intrusive conduct. The home is clearly entitled to protection as a place of sanctuary, free from outside contention and strife. Without such protection, we will have decisions being made, not on the basis of personal conviction, but solely to reduce the clamor of the opposition.

II.

The Activities Of The OBA In Westchester Were Not Beyond The Control Of The State. Handbilling Is Not Entitled To The Same First Amendment Protection Afforded Newspapers and Periodicals Under All Circumstances.

> "Handing out leaflets to passersby is not 'speech pure.' A physical gesture must be utilized to make the potential recipient accept the leaflet. The gesture might be misunderstood. Or the passerby might be coerced into taking the leaflet because of the bulk of the distributor. The passerby may feel that he will be cursed or insulted if he ignores the tendered leaflet. Or, taking a leaflet may be deemed a prudent way of avoiding an unpleasant conversation or an unwelcome oral solicitation." Kamin, *Residential Picketing and the First Amendment*, 61 Nw. U. L. Rev. 177, 212 (1966).

On a number of occasions, teams of OBA members were physically present in the community of Westchester, distributing handbills. The distributions at church and shopping center were necessarily made by tendering handbills to passersby. (A. 54-55) The record is unclear whether distributions to Keefe's neighbors at their homes were uniformly done by depositing the handbills at the door or involved personal confrontation with the homeowner. (A. 46-47) In any event, the distribution of these handbills apparently was the occasion for many conversations with Village residents. (A. 15)

The OBA claims the same first amendment protection for its activities in Westchester afforded the circulation of newspapers and periodicals. Petitioner's Brief pp. 11-12. In fact, the activities of the OBA in Westchester more nearly resemble picketing and should be measured by the same constitutional test. In *Hughes* v. *Superior Court*, 339 U.S. 460 (1950), this court sustained an injunction against Negroes peacefully picketing to compel a grocery store to

hire Negro clerks in proportion to its Negro trade. Regarding picketing, the court stated (pp. 465-466):

> "It has been amply recognized that picketing, not being the equivalent of speech as a matter of fact, is not its inevitable legal equivalent. Picketing is not beyond the control of a State if the manner in which picketing is conducted or the purpose which it seeks to effectuate gives ground for its disallowance."

The court, while recognizing that picketing is a mode of communication, stated that (pp. 464-465):

> " . . . it is inseparably something more and different. Industrial picketing 'is more than free speech, since it involves patrol of a particular locality and since the very presence of a picket line may induce action of one kind or another, quite irrespective of the nature of the ideas which are being disseminated.' Mr. Justice Douglas, joined by Black and Murphy, JJ., concurring in *Bakery & Pastry Drivers & Helpers Local* v. *Wohl*, 315 U.S. 769, 775, 776. Publication in a newspaper, or by distribution of circulars, may convey the same information or make the same charge as do those patrolling a picket line. But the very purpose of a picket line is to exert influences, and it produces consequences, different from other modes of communication. The loyalties and responses evoked and exacted by picket lines are unlike those flowing from appeals by printed word."

The OBA obviously believed that their physical presence was a source of discomfort and alarm to Westchester. Westchester residents were advised that the OBA members would continue coming to their community unless Keefe signed the agreement. "When He Signs We Stay In Austin." (A. 11) and "When He Signs The Agreement We Stop Coming To Westchester." (A. 12) It is not difficult to imagine that Keefe's neighbors were apprehensive over the recurring presence of the members of a militant neighborhood organization hostile to a resident of their

block. The knowledge that Keefe's place of business had been recently burned down by unknown parties might well contribute to this apprehension. (A. 44) Like picketing, therefore, the people of Westchester might well be induced to pressure Keefe into signing the agreement because of the real or threatened presence of OBA members rather than any ideas they were disseminating.

In *Breard* v. *Alexandria,* 341 U.S. 622 (1951), this court sustained a "Green River" ordinance forbidding door to door solicitation, by a distributor of magazines and periodicals, stating (p. 642):

> "Freedom of speech or press does not mean that one can talk or distribute where, when and how one chooses. Rights other than those of the advocates are involved. By adjustment of rights, we can have both full liberty of expression and an orderly life."

The trial court did not enjoin communications by OBA members to residents of the Village of Westchester. They are at liberty to communicate with Keefe's neighbors by letter, newspaper advertisement or any other form of communication which does not involve their bodily entrance into the community. However, the Court did recognize that the purpose of the OBA's presence in Westchester was solely to force Keefe's signing of the non-solicitation agreement by intruding upon his privacy, and held that such purpose was subordinate to protection of home, family and communal life.

A.

The Purpose Of The OBA's Recurring Presence In Westchester Was Relevant In Determining Whether Their Activities Should Be Enjoined.

This court has previously recognized that examination of purpose is constitutionally permissible in considering the propriety of an injunction against activities which

claim First Amendment protection. In *Hughes* v. *Superior Court*, 339 U. S. 460 (1950), this court noted (p. 466):

> "The California Supreme Court suggested a distinction between picketing to promote discrimination, as here, and picketing against discrimination: 'It may be assumed for the purposes of this decision, without deciding, that if such discrimination exists, picketing to protest it would not be for an unlawful objective.' 32 Cal. 2d at 855, 198 P. 2d at 888. We cannot construe the Due Process Clause as precluding California from securing respect for its policy against involuntary employment on racial lines by prohibiting systematic picketing that would subvert such policy. See Giboney v. Empire Storage & Ice Co., supra." • • • Picketing is not beyond the control of a State if . . . the purpose which it seeks to effectuate gives ground for its disallowance."

In *Giboney* v. *Empire Storage Co.*, 336 U. S. 490 (1949), a labor union was enjoined from peaceful picketing to get an ice distributor to agree that it would not sell ice to non-union peddlers. An agreement not to sell ice to non-union peddlers would have been in violation of the Missouri statutes against restraint of trade. The union argued that the injunction was an unconstitutional abridgement of free speech. In rejecting this contention, the court examined the purpose of the union's activities, stating (p. 502):

> "It is true that the agreements and course of conduct here were as in most instances brought about through speaking or writing. But it has never been deemed an abridgement of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed. See e.g., *Fox* v. *Washington*, 236 U. S. 273,

> 277; *Chaplinsky* v. *New Hampshire,* 315 U. S. 568. Such an expansive interpretation of the constitutional guaranties of speech and press would make it practically impossible ever to enforce laws against agreements in restraint of trade as well as many other agreements and conspiracies deemed injurious to society."

Here the OBA's purpose was admittedly to pressure Keefe into signing the non-soliciation agreement. Communication to Keefe's neighbors was incidental to this purpose, subject to abandonment upon Keefe's capitulation. The public policy of the State of Illinois strongly favors protection of the home and its environs from unreasonable intrusion, and the court properly considered the OBA's purpose in granting the temporary injunction.

B.

The OBA's Authorities Regarding The Right To Handbill.

The OBA has reviewed the familiar "Jehovah Witnesses" cases where this Court has struck down various ordinances prohibiting the distribution of handbills and suggested that these cases are controlling here. Brief for Petitioner, pp. 10-12. *Lovell* v. *Griffin,* 303 U.S. 444 (1938), *Schneider* v. *State,* 308 U.S. 147 (1939), *Jamison* v. *Texas,* 318 U.S. 413 (1942), and *Martin* v. *Struthers,* 319 U.S. 141 (1942), all involved ordinances which prohibited or unreasonably interfered with distribution of religious tracts to the public at large. This is not the case here. Do the Jehovah's Witnesses have the right to select a target for conversion and proselytize by continuous neighborhood visits with handbills urging the neighbors to call the recalcitrant convert if they want the Jehovah's Witnesses to stay away? A state should not be powerless to

regulate such intrusion upon residential privacy. Indeed, in *Martin* v. *Struthers, supra,* Mr. Justice Frankfurter, in his dissenting opinion, stated (page 153):

> "Concededly, the Due Process Clause of the Fourteenth Amendment did not abrogate the power of the states to recognize that homes are sanctuaries from intrusions upon privacy and of opportunities for leading lives of health and safety."

The handbillers' right of access to the public at large is not menaced by limiting deliberate and calculated intrusion on the peace and residential privacy of a select target through the use of handbills as a weapon of coercion, not persuasion.

III.

The OBA Was Admittedly Trying To Coerce Keefe Into Agreeing Not To Solicit Business In Austin. A Court Of Equity Is Empowered To Restrain Such Interference With Lawful Business Practice.

Keefe's amended complaint sought injunctive relief against OBA activities both at his home and place of business. (A. 4) In addition to alleging a violation of his right of privacy, Keefe asserted that the OBA's continued attack would ruin and destroy his business and means of livelihood. (A. 3) While the trial judge and Appellate Court relied primarily upon the OBA's violation of Keefe's privacy, the decree below may also be justified on the ground of unlawful interference with lawful business practice.

The right to peacefully engage in a legitimate occupation has long been recognized and protected in Illinois. In *Klein* v. *Department of Registration,* 412 Ill. 75, 105 N.E.2d 758 (1952), the court stated (p. 761):

> "An inherent feature of our form of government is that every citizen has the inalienable right to engage

in any legitimate trade, occupation, business or profession which he sees fit. His labor is his property and is bulwarked by the full and equal protection of the law afforded by the due process clause of the Federal constitution. It is also embraced within the constitutional provision which guarantees to everyone liberty and the pursuit of happiness."

A.

Keefe's Solicitation of Business In Austin Was Lawful.

The leaflets distributed by the OBA in Westchester specifically accused Keefe of "illegal soliciting." (A. 12) His soliciting consisted solely of having his business card distributed door to door bearing the legend, "We invite your listings. We have prospective buyers for income property and residential property in the Austin area." (A. 37) It is clearly a lawful practice for a real estate broker, like any other businessman, to solicit for business as long as there is not solicitation on the basis of prospective loss of value due to racial change. Chicago Fair Housing Ordinance, Ch. 198.7-B, Municipal Code of Chicago; Ill. Rev. Stat. 1969, Ch. 38, § 70-51.

B.

Illinois Public Policy Protects Lawful Business Practices from Unreasonable Interference.

The leading case in Illinois on the right to enjoin conduct, including distribution of leaflets, designed to interfere with another's lawful business is *Carpenters' Union* v. *The Citizens Committee to Enforce the Landis Award*, 333 Ill. 225, 164 N.E. 393 (1928). The Carpenters' Union had not participated with other trades in an arbitration by Judge Landis with the Builders Association over terms of employment, and refused to be bound by his recommendations. The Builders Association formed a corporation to foster support for and enforce the Landis award

against dissenting trades. The court noted that the formation of the corporation was lawful and it was done for a lawful purpose and a commendable motive. But the court further noted that the lawful purpose and a good motive did not justify interference with another's lawful business. The court stated (164 N.E. at p. 398):

> "No person or combination of persons has the right, directly or indirectly, to interfere with or disturb another in his lawful business or occupation or for the sake of compelling him to do some act which in his own judgment he does not approve."

The court reviewed at length the coercive tactics used including pamphlets circulated by the defendants to the effect that there was a "war for decency" and it would be "rough seas ahead" for the contractors, labor unions and others who did not help make the Landis award effective. The court noted (164 N.E. at p. 401):

> "Coercion is as easily accomplished without threats of violence as with them, and fear of loss of or injury to business unless one submits to demands is as effective as fear of violence to his person. No person has a right to break off business relations with him to his injury. If an evil motive does not make a lawful act unlawful, it is equally true that what may be regarded as a good motive will not make an unlawful act lawful."

The case was remanded to the trial court with directions to issue an injunction restraining the defendants from, *inter alia* (pp. 404-405): "attempting to interfere with or disturb or prevent employment of the complainants by newspaper advertisements, telephone messages, letters, circulars, notices, personal conversation, economic pressure or other means . . ."

The *Carpenters' Union* case, *supra,* was cited with approval in *Austin Congress Corp.* v. *Mannina,* 46 Ill. App. 2d 192, 196 N.E.2d 33 (1964), where the courts sustained

an injunction restraining defendants from picketing a nursing home with placards stating that the building code had been violated and safety impaired. The court stated the public policy of Illinois as follows (196 N.E.2d at p. 39):

> "That picketing for the purpose of harassment and to cause economic ruination even under the cloak of publicizing the truth of a purported building code violation is violative of the public policy of the State of Illinois is well settled."

In *Giboney* v. *Empire Storage Co.*, 336 U.S. 490 (1948), this court sustained an injunction against union members peacefully picketing a place of business urging that sales be limited to union members, on the ground that the first amendment does not protect speech or other communications intended to coerce an unlawful business practice.

In *Truax* v. *Corrigan*, 257 U.S. 312 (1921), it was held that Arizona could not constitutionally deny a restaurant owner the remedy of injunction where striking employees were, by "moral coercion," discouraging patrons from entering the premises, thereby causing intentional injury to plaintiff's business.

The cause of the controversy between Keefe and the OBA has now been resolved. In 1969, Illinois adopted legislation whereby homeowners who do not desire to be solicited for the sale of their property may register with the Illinois Human Relations Commission which in turn gives notice of the homeowner's wishes to real estate brokers. Ill. Rev. Stat. 1969, Ch. 127, § 214, .4-1; Ch. 38, § 70-51(d). Solicitation thereafter by a broker is unlawful. If the OBA now deems any form of solicitation to be offensive it may concentrate on the registration of property owners under the act. Under Illinois law no group is entitled to harass and coerce another to abandon lawful business practice, and the trial court properly enjoined such activity here.

IV.

The Scope of the Injunction Order.

The OBA argues that the temporary injunction order is overbroad because there is no evidence that the OBA had engaged in picketing in Westchester. Brief of Petitioner, pp. 23-24. The OBA was actively picketing Keefe's place of business in Chicago and the trial court could reasonably conclude that there was an imminent threat of this conduct in Westchester. Moreover, the record does not disclose any specific objection by the OBA against the restraint against picketing in Westchester. Under well settled Illinois law, the OBA cannot now be heard to complain that the injunction order is too broad where that objection was not presented to the chancellor in the first instance. *Austin Congress Corporation* v. *Mannina,* 46 Ill. App. 2d 192, 196 N.E. 2d 33, 34 (1964).

Conclusion

It is respectfully submitted that the court below should be affirmed and the matter remanded to the Circuit Court of Cook County, Illinois for a full hearing on the merits of this case.

Respectfully submitted,

THOMAS W. MCNAMARA
JOHN C. TUCKER
Attorneys for Respondent

Of Counsel
JENNER & BLOCK
135 South LaSalle Street
Chicago, Illinois 60603